

Senate Engrossed

State of Arizona
Senate
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 52

SENATE BILL 1348

AN ACT

AMENDING SECTIONS 42-1103.02, 42-1105 AND 42-1125.01, ARIZONA REVISED
STATUTES; RELATING TO GENERAL TAX ADMINISTRATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 42-1103.02, Arizona Revised Statutes, is amended to read:

42-1103.02. Understatement of taxpayer's liability by return preparer; civil penalty; definition

A. The department may impose a civil penalty of two hundred fifty dollars against a return preparer who knew or REASONABLY should have known that an understatement of liability was on a return or claim for refund. THE PENALTY UNDER THIS SUBSECTION MAY BE IMPOSED ONLY IF THERE WAS NOT A REALISTIC POSSIBILITY THAT THE POSITION WOULD BE SUSTAINED ON ITS MERITS AND THE POSITION WAS NOT DISCLOSED TO THE DEPARTMENT IN THE RETURN OR IN A STATEMENT ATTACHED TO THE RETURN.

B. The department may impose a civil penalty of one thousand dollars against a return preparer who wilfully made an understatement of liability on a return or claim for refund.

C. A return preparer is required to only pay eighty-five per cent of the imposed penalty if the payment is made within thirty days from the date OF THE RECEIPT OF NOTIFICATION that the penalty was imposed. A return preparer may not appeal to the department pursuant to section 42-1251 if the return preparer fails to file the appeal within thirty days from the date OF THE RECEIPT OF NOTIFICATION that the penalty was imposed. If there is a final order or decision stating that the return preparer did not make an understatement of liability in a return or claim for refund, the department shall refund any penalty amount paid and interest to the return preparer.

D. For the purposes of this section, "understatement of liability" means any understatement of the net amount payable with respect to any imposed tax or any overstatement of the net amount creditable or refundable with respect to any tax.

Sec. 2. Section 42-1105, Arizona Revised Statutes, is amended to read:

42-1105. Taxpayer identification, verification and records; retention

A. The federal taxpayer identification number, assigned pursuant to section 6109 of the internal revenue code, is the taxpayer identifier for purposes of the taxes administered pursuant to this article. Each person who is required to make a return, statement or other document shall include the identifier in order to secure the person's proper identification. If the return, statement or other document is made, electronically or otherwise, by another person on behalf of the taxpayer, the taxpayer shall furnish the identifier to the other person, and the person shall furnish both the taxpayer's identifier and his own identifier with the return, statement or document.

1 B. The department may prescribe by administrative rule alternative
2 methods for signing, subscribing or verifying a return, statement or other
3 document required or authorized to be filed with the department that have the
4 same validity and consequence as the actual signature or written declaration
5 of the taxpayer or other person required to sign, subscribe or verify the
6 return, statement or other document. While the department is adopting a rule
7 prescribing alternative methods for signing, subscribing or verifying a
8 return, statement or other document, the director, by tax ruling, may waive
9 the requirement of a signature for a particular type or class of return,
10 statement or other document required to be filed with the department. For
11 purposes of this subsection, "tax ruling" has the same meaning prescribed in
12 section 42-2052.

13 C. A person who is a return preparer or an electronic return preparer
14 shall furnish a completed copy of the return, statement or other document to
15 the taxpayer no later than the time the return, statement or other document
16 is presented for the taxpayer's signature.

17 D. Except as provided in section 42-3010, every person who is subject
18 to the taxes administered pursuant to this article shall keep and preserve
19 copies of filed tax returns, including any attachments to the tax return, any
20 signature documents used for the tax return, suitable records and other books
21 and accounts necessary to determine the tax for which the person is liable
22 for the period prescribed in section 42-1104. The books, records and
23 accounts shall be open for inspection at any reasonable time by the
24 department or its authorized agent.

25 E. Except as provided in section 42-3010, a return preparer or
26 electronic return preparer shall keep copies of the return, statement or
27 other document for six years for transaction privilege and use tax returns
28 and four years for all other returns, statements and other documents
29 following the date on which the return, statement or other document was due
30 to be filed or was filed with the department PRESENTED TO THE TAXPAYER FOR
31 SIGNATURE, whichever is later.

32 F. Except as provided in section 42-3010, the department may require
33 by administrative rule electronic return preparers to keep for each prepared
34 return, statement or other document the following documents for six years for
35 transaction privilege and use tax returns and four years for all other
36 returns, statements and other documents following the later of either the
37 date on which the return, statement or other document was filed or was due
38 to be filed with the department OR WAS PRESENTED TO THE TAXPAYER FOR
39 SIGNATURE:

40 1. The signature document or tax return form bearing the taxpayer's
41 original signature in a manner prescribed by the department by administrative
42 rule or tax ruling.

43 2. Any attachments to the return, statement or other document required
44 to be submitted to the department if the return, statement or other document
45 had not been electronically transmitted to the department.

1 G. The operator of a swap meet, flea market, fair, carnival, festival,
2 circus or other transient selling event shall maintain a current list of
3 vendors conducting business on the premises as sellers. The list shall
4 include each vendor name, business name and business address. On written
5 notice the department may require an operator to submit a copy of the list
6 at any time to the department.

7 H. For at least the period of time prescribed by section 42-1104, the
8 department shall retain records pursuant to sections 41-1346 through 41-1349
9 and 41-1351.

10 Sec. 3. Section 42-1125.01, Arizona Revised Statutes, is amended to
11 read:

12 42-1125.01. Civil penalties for return preparers, electronic
13 filing and payment participants

14 A. If a return preparer or electronic return preparer fails to furnish
15 a completed copy of any return, statement or other document to the taxpayer
16 when the return, statement or other document is presented for the taxpayer's
17 signature, the return preparer shall pay a penalty of fifty dollars unless
18 it is shown that the failure is due to reasonable cause and not due to wilful
19 neglect. The maximum penalty amount for a return preparer under this
20 subsection during any calendar year shall not exceed twenty-five thousand
21 dollars.

22 B. If a return preparer or electronic return preparer fails to sign
23 any return, statement or other document, the return preparer or electronic
24 return preparer shall pay a penalty of fifty dollars unless it is shown that
25 the failure is due to reasonable cause and not due to wilful neglect. The
26 maximum penalty amount for a return preparer or electronic return preparer
27 under this subsection during any calendar year shall not exceed twenty-five
28 thousand dollars.

29 C. If a return preparer or electronic return preparer fails to furnish
30 the preparer's identifying number on any return, statement or other document,
31 the return preparer or electronic return preparer shall pay a penalty of
32 fifty dollars unless it is shown that the failure is due to reasonable cause
33 and not due to wilful neglect. The maximum penalty amount for a return
34 preparer or electronic return preparer under this subsection during any
35 calendar year shall not exceed twenty-five thousand dollars.

36 D. If a return preparer or electronic return preparer fails to retain
37 a copy of any return, statement or other document for six years for
38 transaction privilege and use tax returns and four years for all other
39 returns, statements or other documents following the later of either the date
40 on which the return, statement or other document ~~was filed or~~ was due to be
41 filed with the department OR WAS PRESENTED TO THE TAXPAYER FOR SIGNATURE, the
42 return preparer or electronic return preparer shall pay a penalty of fifty
43 dollars unless it is shown that the failure is due to reasonable cause and
44 not due to wilful neglect. The maximum penalty amount for a return preparer

1 or electronic return preparer under this subsection during any calendar year
2 shall not exceed twenty-five thousand dollars.

3 E. If a return preparer or electronic return preparer fraudulently
4 endorses or negotiates any check that is issued to a taxpayer, the return
5 preparer or electronic return preparer shall pay a penalty of five hundred
6 dollars.

7 F. An electronic return preparer or electronic return transmitter that
8 fails to comply with any electronic filing program requirement shall pay a
9 penalty of fifty dollars for each failure unless it is shown that the failure
10 is due to reasonable cause and not due to wilful neglect. The maximum
11 penalty amount for a return preparer, electronic return preparer or
12 electronic return transmitter under this subsection during any calendar year
13 shall not exceed twenty-five thousand dollars.

14 G. The penalties provided in this section are in addition to other
15 penalties provided by law.

16 H. All penalties are payable on notice and demand from the department.

17 I. This section applies to all taxes administered by the department.

APPROVED BY THE GOVERNOR APRIL 8, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 8, 2003.

Passed the House April 1, 2003,

by the following vote: 56 Ayes,

3 Nays, 1 Not Voting

Jake Flake
Speaker of the House

Speman L. Moore
Chief Clerk of the House

Passed the Senate March 4, 2003,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

Ken Blumett
President of the Senate

Norma Chestain
Asst. Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

2 day of April, 2003

at 12:30 o'clock P. M.

Sandra Ramirez
Secretary to the Governor

Approved this 8 day of

April, 2003,

at 3:20 o'clock P. M.

Jon R. Norbeck
Governor of Arizona

S.B. 1348

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 8 day of April, 2003

at 3:53 o'clock P. M.

Janice K. Brewer
Secretary of State